

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

v.

LANTANA-FOUNTAINS, LLC, an
Oregon limited liability company; 1280 N.
LAUREL AVENUE, LLC, a California
limited liability company; 3901 TILDEN
AVENUE, L.P., a California limited
partnership; 12815 PACIFIC AVENUE,
L.P., a California limited partnership;
12421 PACIFIC AVENUE, L.P., a
California limited partnership;
SPRIESTSMA LANTANA, LLC, an
Oregon limited liability company;
WATHEY-LANTANA, LLC, an Oregon
limited liability company; CRAMER
INVESTMENT GROUP-LANTANA,
LLC, an Oregon limited liability company;
NOEKER LANTANA, LLC, an Oregon
limited liability company; PFS XVIII,
LLC, an Oregon limited liability company,

Defendants.

2:10-CV-01303-PMP-LRL

ORDER FOR
APPOINTMENT OF RECEIVER

This matter came before the court on the application for appointment of a receiver filed by Plaintiff Federal Home Loan Mortgage Corporation (“Freddie Mac”). The court conducted a hearing pursuant to Rule 66-2, D. Nev. L.R., preceded by ten days’ notice to the parties sought to be subjected to receivership and to all known creditors. The court finds as follows:

///

1 1. Freddie Mac is the holder of two promissory notes, the payment and
2 performance of which is secured by deeds of trust encumbering the property located at
3 6501 West Charleston Boulevard and 1200 S. Torrey Pines Drive, Las Vegas, Nevada,
4 legally described as follows:

5 PARCEL I:

6 GOVERNMENT LOT SEVEN (7) OF SECTION 2, TOWNSHIP 21
7 SOUTH, RANGE 60 EAST, M.D.B. & M.

8 EXCEPTING THEREFROM THE INTEREST IN AND TO THE
9 NORTH FIFTY (50.00) FEET AS CONVEYED TO COUNTY OF
10 CLARK FOR ROAD PURPOSES BY DEED RECORDED
11 NOVEMBER 25, 1974 IN BOOK 476 AS DOCUMENT NO. 435894,
12 CLARK COUNTY, NEVADA RECORDS.

13 PARCEL II:

14 GOVERNMENT LOT SEVENTEEN (17) OF SECTION 2,
15 TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.B. & M.

16 EXCEPTING THEREFROM THE WEST THIRTY (30.00) FEET;
17 TOGETHER WITH A SPANDREL AREA IN THE NORTHEAST
18 CORNER OF THE INTERSECTION OF REDWOOD STREET AND
19 DEL REY AVENUE, BOUNDED AS FOLLOWS:

20 ON THE WEST BY THE EAST LINE OF THE WEST
21 THIRTY (30.00) FEET THEREOF;
22 ON THE SOUTH BY THE NORTH LINE OF THE SOUTH
23 THIRTY (30.00) FEET THEREOF;
24 AND ON THE NORTHEAST BY THE ARC OF A CURVE
25 CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF
26 FIFTEEN (15.00) FEET AND BEING TANGENT TO THE
EAST LINE OF SAID WEST THIRTY (30.00) FEET, AS
CONVEYED TO THE COUNTY OF CLARK FOR ROAD
PURPOSES BY DEED RECORDED JULY 10, 1979 IN
BOOK 1083 AS DOCUMENT NO. 1042992 OF OFFICIAL
RECORDS.

PARCEL III:

GOVERNMENT LOT EIGHTEEN (18) OF SECTION 2,
TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.B. & M.
EXCEPTING THEREFROM THE SOUTH THIRTY (30.00)
FEET AS CONVEYED TO THE COUNTY OF CLARK
FOR ROAD PURPOSES BY DEED RECORDED JULY 10,
1979 IN BOOK 1083 AS DOCUMENT NO. 1042992 OF
OFFICIAL RECORDS.

1 PARCEL IV:

2 A NON-EXCLUSIVE DRAINAGE EASEMENT AS SET
3 FORTH IN THAT CERTAIN "DECLARATION OF
4 DRAINAGE EASEMENT" RECORDED FEBRUARY 9,
5 2000, IN BOOK 20000209 AS DOCUMENT NO. 01167, IN
6 THE OFFICE OF THE COUNTY RECORDER OF CLARK
7 COUNTY, NEVADA, AS APPURTENANT TO PARCELS
8 I-A, I-B AND I-C HEREINABOVE.

9 PARCELS I, II, AND III ARE MORE PARTICULARLY
10 DESCRIBED AS FOLLOWS:

11 BEGINNING AT THE SOUTHWEST CORNER OF
12 GOVERNMENT LOT SEVENTEEN (17) IN SECTION 2,
13 TOWNSHIP 21 SOUTH, RANGE 60 EAST, M.D.B. & M., SAID
14 POINT BEING THE CENTERLINE INTERSECTION OF DEL RAY
15 AVENUE AND REDWOOD STREET;
16 THENCE ALONG THE CENTERLINE OF DEL RAY AVENUE,
17 NORTH 88°53'55" EAST 659.13 FEET;
18 THENCE NORTH 03000'21" WEST 30.02 FEET TO A POINT ON
19 THE NORTHERLY RIGHT OF WAY LINE OF DEL RAY
20 AVENUE, SAID POINT BEING THE TRUE POINT OF
21 BEGINNING;
22 THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE,
23 SOUTH 88°53'55" WEST 614.52 FEET TO THE BEGINNING OF A
24 TANGENT CURVE CONCAVE NORTHEASTERLY AND
25 HAVING A RADIUS OF 15.00 FEET;
26 THENCE WESTERLY, NORTHWESTERLY AND NORTHERLY
27 ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
28 88°12'27" AN ARC DISTANCE OF 23.09 FEET TO A POINT ON
29 THE EASTERLY RIGHT OF WAY LINE OF REDWOOD STREET;
30 THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE,
31 NORTH 02°53'38" WEST 637.10 FEET;
32 THENCE LEAVING SAID EASTERLY RIGHT OF WAY LINE,
33 NORTH 88°47'27" EAST 298.87 FEET;
34 THENCE NORTH 02°56'59" WEST 624.26 FEET TO A POINT ON
35 THE SOUTHERLY RIGHT OF WAY LINE OF CHARLESTON
36 BOULEVARD;
37 THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE,
38 NORTH 89°29'19" EAST 328.41 FEET;
39 THENCE LEAVING SAID SOUTHERLY RIGHT OF WAY LINE,
40 SOUTH 03°00'21" EAST 1,273.14 FEET TO THE POINT OF
41 BEGINNING.

42 (APN 163-02-104-004)

43 ("Charleston Parcels"); and:

44 PARCEL I:

45 GOVERNMENT LOT NINETEEN (19) IN SECTION 2, TOWNSHIP

21 SOUTH, RANGE 60 EAST, M.D.B. & M.

EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO
CLARK COUNTY BY DEED RECORDED JULY 10, 1979, IN
BOOK 1083 AS
DOCUMENT NO. 104992 OF OFFICIAL RECORDS.

PARCEL II:

GOVERNMENT LOT TWENTY (20) IN SECTION 2, TOWNSHIP
21 SOUTH, RANGE 60 EAST, M.D.B. & M.

EXCEPTING THEREFROM:

THE INTEREST IN AND TO THE NORTH 30.00 FEET AND EAST
40.00 FEET AND THE SOUTH THIRTY FEET TOGETHER WITH
THAT SPANDREL AREA
DESCRIBED BELOW AS CONVEYED TO THE COUNTY OF
CLARK FOR ROAD PURPOSES BY DEED RECORDED JULY 7,
1977 IN BOOK 760 AS DOCUMENT
NO. 719160 AND RE-RECORDED AUGUST 3, 1977 IN BOOK 771
AS DOCUMENT NO. 730573 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM A SPANDREL AREA IN THE
NORTHEAST CORNER THEREOF, BEING THE SOUTHWEST
CORNER INTERSECTION OF HOLMBY AVENUE AND TORREY
PINES DRIVE, BOUNDED AS FOLLOWS:

ON THE NORTH SIDE OF THE SOUTH LINE OF THE NORTH
30.00 FEET, ON THE EAST SIDE BY THE WEST LINE OF THE
EAST 40.00 FEET AND ON THE SOUTHWESTERLY SIDE BY
THE ARC OF A CURVE CONCAVE TO THE SOUTHWEST
HAVING A RADIUS OF 20.00 FEET, THAT IS TANGENT TO THE
SOUTH LINE OF SAID NORTH 30.00 FEET AND TANGENT TO
THE WEST LINE OF SAID EAST 40.00 FEET;

ALSO TOGETHER WITH A SPANDREL AREA IN THE
SOUTHEAST CORNER THEREOF BEING THE NORTHWEST
CORNER OF THE INTERSECTION OF TORREY PINES DRIVE
AND DEL RAY AVENUE, BOUNDED AS FOLLOWS:

ON THE EAST SIDE BY THE WEST LINE OF THE EAST 40.00
FEET, ON THE SOUTH SIDE BY THE NORTH LINE OF THE
SOUTH 30.00 FEET AND ON THE
NORTHEASTERLY SIDE BY THE ARC OF A CURVE CONCAVE
TO THE NORTHEAST HAVING A RADIUS OF 20.00 FEET THAT
IS TANGENT TO THE WEST LINE OF SAID EAST 40.00 FEET AND TANGENT TO

PARCELS I AND II ARE MORE PARTICULARLY DESCRIBED
AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF

1 GOVERNMENT LOT NINETEEN (19) IN SECTION 2, TOWNSHIP
21 SOUTH, RANGE 60 EAST, M.D.B. & M.;

2 THENCE NORTH 88°47'27" EAST 617.72 TO A POINT ON THE
3 WESTERLY RIGHT OF WAY LINE OF TORREY PINES DRIVE;

4 THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE,
5 SOUTH 03°07'08" EAST 633.35 FEET TO THE BEGINNING OF A
TANGENT CURVE CONCAVE NORTHWESTERLY AND
6 HAVING A RADIUS OF 20.00 FEET;

7 THENCE SOUTHERLY, SOUTHWESTERLY AND WESTERLY
8 ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
92°01'03" AN ARC DISTANCE OF 32.12 FEET TO A POINT ON
THE NORTHERLY RIGHT OF WAY LINE OF DEL RAY
9 AVENUE;

10 THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE,
SOUTH 88°53'55" WEST 598.33 FEET;

11 THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE,
12 NORTH 30°00'21" WEST 652.86 FEET TO THE POINT OF
BEGINNING.
13 (APN 163-02-104-007)

14 ("Torrey Pines Parcels").¹

15 2. The deed of trust encumbering the Charleston Parcels ("Charleston Senior
16 Deed of Trust") secures payment of the principal sum of \$18.7 million, together with
17 interest as provided under the terms of the corresponding note ("Charleston Senior
18 Note").

19 3. The deed of trust encumbering the Torrey Pines Parcels ("Torrey Pines Senior
20 Deed of Trust") secures payment of the principal sum of \$12.3 million, together with
21 interest as provided under the terms of the corresponding note ("Torrey Pines Senior
22 Note").

23 4. Both the Charleston Senior Deed of Trust and the Torrey Pines Senior Deed
24 of Trust include language imposing an assignment of rents from Defendants to the deed

25 ¹ Collectively, the Charleston Parcels and the Torrey Pines Parcels are referred to as the
26 "Property."

1 of trust beneficiary. Section 3(a) provides:

2 Borrower absolutely and unconditionally assigns and transfers to
3 Lender all Rents. It is the intention of Borrower to establish a present,
4 absolute and irrevocable transfer and assignment to Lender of all Rents
and to authorize and empower Lender to collect and receive all Rents
without the necessity of a further action on the part of Borrower . . .

5 See Complaint, Exhibits 3 and 4, Section 3(a) at page 9.

6 5. Defendants Lantana-Fountains, LLC; Lantana Investors, LLC; 1280 N.
7 Laurel Avenue, LLC; 3901 Tilden Avenue, L.P.; 12815 Pacific Avenue, L.P.; 12421
8 Pacific Avenue, L.P.; Sprietsma Lantana, LLC; Wathey-Lantana, LLC; Cramer
9 Investment Group-Lantana, LLC; Noecker Lantana, LLC; and PFS XVIII, LLC
10 (collectively, "Lantana TIC") are the makers/obligors on the Charleston Senior Note and
11 Torrey Pines Senior Note and the borrower/trustor under the Charleston Senior Deed of
12 Trust and Torrey Pines Senior Deed of Trust.

13 6. Lantana TIC consented to appointment of a receiver to collect the assigned
14 rents. The deeds of trust provide:

15 [I]f an Event of Default has occurred and is continuing, regardless of
16 the adequacy of Lender's security, without regard to Borrower's
17 solvency and without the necessity of giving prior notice (oral or
18 written) to Borrower, Lender may apply to any court having
19 jurisdiction for the appointment of a receiver for the Mortgaged
20 Property to take any or all of the actions set forth in the preceding
21 sentence. If Lender elects to seek the appointment of a receiver for the
Mortgage Property at any time after an Event of Default has occurred
and is continuing, Borrower, by its execution of this Instrument
expressly consents to the appointment of such receiver, including the
appointment of a receiver *ex parte* if permitted
by applicable law.

22 See Complaint, Exhibits 3 and 4, Section 3(d) at page 10.

23 7. Freddie Mac is entitled to take possession of Property and to
24 enter upon and take and maintain full control of the Mortgaged
25 Property in order to perform all acts that Lender in its discretion
26 determines to be necessary or desirable for the operation and
maintenance of the Mortgaged Property, including the execution,
cancellation or modification of Leases, the collection of all Rents, the

1 making of repairs to the Mortgaged Property and the execution or
2 termination of contracts providing for the management, operation or
3 maintenance of the Mortgaged Property, for the purpose of enforcing
4 the assignment of Rents pursuant to Section 3(a) . . .

5 *Id.*

6 8. In particular, Lantana TIC assigned its residential leases to Freddie Mac.

7 *See Id.* at Section 4 at 11-13.

8 9. No evidence has been presented that Lantana TIC diverted or removed any
9 rental revenue from the operating expenses and payments under the Loan.

10 10. The Court finds that GREP Southwest, LLC, d/b/a Greystar (“Greystar”) is
11 qualified and ready, willing and able to perform the functions of receiver of the Property
12 and can perform in accordance with the terms of this Order set forth below.

13 WHEREFORE, the Court concludes and orders as follows:

14 A. Pursuant to N.R.S. §§ 107.100, 107A.260 and 32.010(6), Freddie Mac is
15 entitled to an appointment of receiver. In particular, the Court holds that the assignor of
16 rents, Lantana TIC, is in default, and that Lantana TIC agreed in signed documents to the
17 appointment of a receiver. It appears likely that the real property may not be sufficient to
18 satisfy the secured obligations under the Charleston Senior Note and the Torrey Pines
19 Senior Note. The occurrence of a default justifies the appointment of a receiver.
20 Consequently, effective _November 10_, 2010, at _10:00_ a.m., Greystar is
21 hereby appointed receiver (“Receiver”) of the Property pursuant to the provisions of and
22 governed by Rules 66-1 through 66-10, D.Nev.L.R. Nothing herein shall prohibit or
23 function to preclude Freddie Mac from exercising any other of its cumulative (judicial or
24 non-judicial) remedies. N.R.S. § 107A.300(3).

25 B. The Receiver shall enter upon and take and maintain full control of the
26 Property, including but not limited to all land, buildings and structures, leases, leasehold
interests, fixtures and moveable personal property that is a part of the Property, or is
located thereon, plus all accounts, including bank, security deposit and operating

1 accounts, all rents, prepaid rents, security deposits, and income thereof and insurance and
2 condemnation awards, payments and proceeds (collectively "Rents, Issues and Profits"),
3 whether held or maintained by Lantana TIC or any other person or entity. In taking control
4 of the Rents, Issues and Profits, the Receiver shall deposit all monies received as
5 Receiver in an account or accounts in a federally insured banking institution within this
6 state, such account(s) to relate solely to the Property and not to be commingled with other
7 funds (including security deposits), and no withdrawals shall be made thereafter, except
8 as directed herein, by this Court or on a draft or check signed by the Receiver, and the
9 Receiver shall furnish Lantana TIC and Lantana TIC's attorney(s) with a photocopy of
10 the monthly statements received from said banking depository. The Receiver shall have
11 all the customary and normal powers accorded a receiver subject to those limitations
12 otherwise described in this Order. Neither Freddie Mac nor the Receiver shall be liable
13 for any obligations of Lantana TIC relating to the Property that arose prior to the date and
14 time of entry of this Order.

15 C. Until further Court order, the Receiver shall hold and maintain the Property
16 in good condition and repair, reasonable wear and tear excepted, and shall collect the
17 Rents, Issues and Profits, the same to be held and disbursed pursuant to the terms of this
18 Order.

19 D. Lantana TIC shall immediately deliver to the Receiver and the Receiver
20 shall collect and maintain the following documents, records, personal property and
21 information, except and unless where Lantana TIC has already done so, and where the
22 Receiver has already received the same:

23 1. A balance sheet, statement of income and expenses and a statement
24 of changes in financial position of Lantana TIC for the most recent fiscal year;

25 2. A quarterly or year to date income and expense statement for the
26 Property;

1 3. A monthly property management report for the Property showing the
2 number of inquiries made and rental applications received from tenants or prospective
3 tenants and deposits received from tenants;

4 4. A rent schedule showing the name of each tenant, address/space
5 occupied, lease expiration date, rent payable for the current month, the date through
6 which rent has been paid, and the amount of rent per periodic rental;

7 5. Complete and accurate books of account and records adequate to
8 ascertain operational costs and expenses;

9 6. Copies of all written contracts, leases, and other instruments, which
10 affect the Property, tenant files, lease files, credit reports, marketing materials, service
11 contracts, utility account and billing information, insurance contracts/binders, licenses
12 and correspondence;

13 7. Intangible personal property, including but not limited to, computer
14 files and records, rights to continued use of telephone numbers, internet website domain
15 names, trademarks, and trade dress;

16 8. Ownership and title to all security and other deposits, however held
17 and wherever located;

18 9. An accounting of all security deposits held pursuant to leases,
19 including bank records, account numbers, and a ledger of deposits with records of the
20 depositor/tenant for whose benefit the deposit was made;

21 10. A separate certification by an individual having authority to bind
22 Lantana TIC as to the accuracy and thoroughness of records and information provided;

23 11. All further information necessary and appropriate for the Receiver to
24 conduct an audit of books and records, either personally or through an independent
25 certified public accountant; and

26 12. Tangible personal property reasonable and necessary for a seamless

1 transition of control by the Receiver, including, without limitation, all keys, security
2 codes, gate access, office supplies, office furnishings, computer hardware and software,
3 telephones or other communication equipment, machinery, tools, equipment and supplies
4 currently used to operate and maintain the Property.

5 E. As necessary, the Receiver may hire, manage, terminate and supervise, any
6 and all property management personnel of Lantana TIC or similar independent
7 contractors of Lantana TIC. The Receiver may retain the property management services
8 of Greystar Management Service, L.P. The receiver may retain the services of Nevada
9 licensed counsel at market rate to bring summary eviction actions. All other engagements
10 of professionals shall be in accordance with paragraph DD below.

11 F. The Receiver is authorized and directed to demand, collect and receive
12 from the tenants of the Property ("Tenants") or any other person liable therefor, all rents,
13 utilities, obligations, deposits or maintenance fees now due and unpaid or hereafter
14 becoming due.

15 G. The Receiver shall confirm and provide notice to the Tenants of the
16 assignment of rents provisions of the Charleston Senior Deed of Trust and the Torrey
17 Pines Senior Deed of Trust and of the requirement that Tenants of the Property pay the
18 Receiver directly. The Receiver shall deliver a copy of this Order and the form of notice
19 provided by N.R.S. § 107A.290 to the Tenants and also post a copy in a conspicuous
20 location in the leasing office. By receipt of such notice, Tenants are instructed by this
21 court to attorn to the Receiver and pay over to the Receiver all rents, utilities, obligations,
22 deposits and fees now due and unpaid, or which may hereafter become due.

23 H. The Tenants or other persons now or hereafter occupying any part or parts
24 of the Property shall, for as long as Receiver is in control of the Property pursuant to this
25 Order, make all payments under their leases or arising out of their occupancy or use of
26 the Property, including but not limited to payments now due or past due and those that

1 come due hereafter, directly to the Receiver or the Receiver's representative(s), such
2 payments shall constitute pro tanto (dollar for dollar) discharge of said persons' payment
3 obligations under the leases or other use or occupancy arrangements.

4 I. Lantana TIC and all persons acting under the control or authority of
5 Lantana TIC or in concert or participation with Lantana TIC, are hereby prohibited from
6 (1) collecting any rents, utilities, obligations, deposits or maintenance fees for the
7 Property, (2) terminating or causing to be terminated, any license, insurance policies,
8 permit, lease contract or agreement relating to the Property and (3) interfering in any
9 manner with the Property or the Receiver's possession of the Property. The Tenants and
10 other persons liable for the rents, utilities, obligations, deposits or maintenance fees are
11 hereby enjoined and restrained from paying any rent, utility, obligation, deposit or fee to
12 Lantana TIC, or its agents, servants, employees, officers, directors, principals, shareholders,
13 attorneys and all persons acting under the control or authority of Lantana
14 TIC or in concert or participation with Lantana TIC, or to any other person other than the
15 Receiver, or its duly designated agent. Lantana TIC shall have no control over, or
16 authority to operate Lantana TIC's business at the Property. Lantana TIC shall be
17 allowed reasonable access, with escort by the Receiver, to the Property upon providing
18 24 hours written notice to the Receiver.

19 J. The Receiver is authorized to borrow funds or accept an advance thereof
20 from Freddie Mac on reasonable terms to be negotiated by and between the Receiver and
21 Freddie Mac but only if the Receiver determines that it possesses insufficient funds from
22 the rental revenue, such funds to be used, if necessary, for the operation and maintenance
23 of the Property, or for establishing and/or continuing utility services to the Property. The
24 Receiver shall not undertake any borrowings, incur any other secured obligations, or
25 suffer or permit any liens or encumbrances on the Property unless authorized by Freddie
26 Mac and unless such borrowings or obligations are necessary, in the judgment of the

1 Receiver. Any indebtedness incurred by the Receiver under this paragraph shall be a lien
2 against the Property prior to all rights, title, interests or claims of any other person
3 (including the liens imposed by reason of the Charleston Senior Deed of Trust and Torrey
4 Pines Senior Deed of Trust). In the event of a cure, payoff, redemption, or reinstatement
5 of the Charleston Senior Deed of Trust and the Torrey Pines Senior Deed of Trust, the
6 additional borrowing and indebtedness authorized by this paragraph shall be deemed part
7 of the indebtedness owed by Lantana TIC to Freddie Mac under the Charleston Senior
8 Note, Torrey Pines Senior Note, Charleston Senior Deed of Trust and Torrey Pines
9 Senior Deed of Trust.

10 K. The Receiver shall, within a reasonable period of time, repay from the
11 Rents, Issues and Profits collected or received, all funds loaned or advanced pursuant to
12 this Order. Such loans shall constitute an advance of principal on the loan from Freddie
13 Mac to Lantana TIC. Such advances shall not, however, be included in any claim that
14 Freddie Mac may have against any Guarantors if any.

15 L. The Receiver shall pay all reasonable and necessary expenses of operation
16 including maintenance and repairs to the Property, taxes and other obligations (if not
17 otherwise exempt), utilities, and other publicly necessary services, all such payments to
18 be made from Rents, Issues and Profits collected or received. Unless deemed necessary
19 by the Receiver to preserve or maintain the Property, the Receiver shall not, without prior
20 approval of Freddie Mac or the Court, pay or agree to pay for expenses of the Property
21 incurred by Lantana TIC prior to the date of this Order.

22 M. Any utility company providing service to the Property shall not, without
23 prior order of this Court, discontinue or terminate such service based on the status of
24 payment on an account for the Property maintained by Lantana TIC or agent thereof, the
25 Receiver also shall not be required to make any deposit or advance payment as a
26 condition of receiving utility services; provided that the Receiver shall not request or

1 accept services if the Receiver knows or believes the assets of the receivership will be
2 insufficient to pay for such services.

3 N. All Rents, Issues and Profits collected or received by the Receiver shall
4 first be applied to the costs of taking control of and managing the Property and collecting
5 the Rents, Issues and Profits thereof, including, but not limited to, attorneys' fees, the
6 Receiver's fees, premiums on the Receiver's bond, costs of repairs to the Property,
7 premiums on insurance policies, taxes, assessments, amounts due on liens senior to the
8 lien of Freddie Mac, and other charges on the Property, and to the costs of discharging
9 any other obligations of the Receiver. The Receiver also may draw on the Reserve and
10 Repair Escrow accounts being maintained by Freddie Mac under the loans for the benefit
11 of the Property, such funds to be used to preserve, maintain and repair the Property.

12 O. The Receiver shall pay insurance premiums to protect the security of Freddie
13 Mac and maintain state and federally required insurance for workers compensation and
14 unemployment. Lantana TIC shall continue to be named as a named insured or additional
15 insured as its interests may appear in any insurance policy that the Receiver continues or
16 obtains with respect to the Property. The Receiver shall deduct such sums from the wages
17 and salaries as are required for federal and state withholding of taxes on income. The
18 Receiver shall not pay any employee benefits unless necessary for the performance of an
19 employee's day-to-day work.

20 P. The Receiver shall market the Property for lease to potential tenants and
21 may, without further Court Order, negotiate and enter into leases containing reasonable
22 rental terms and conditions as may exist from time to time for similar properties available
23 in Clark County, Nevada. The Receiver also may take such reasonable action, as the
24 Receiver shall deem necessary to enforce, modify or terminate all leases currently in
25 place on the Property and those that may hereafter be made by the Receiver.

26 Q. The Receiver shall maintain common areas including parking lots, parking

1 spaces, clubhouse facilities, fences, walls, landscaping, vegetation, exterior and interior
2 paint and wall coverings, flooring, hallways, roofs, and structural components of each
3 building. The Receiver shall not make any capital improvements or substantial repairs
4 exceeding Ten Thousand Dollars (\$10,000.00) for any one repair without prior written
5 consent of Freddie Mac (or its counsel) or prior approval of the court, except in cases of a
6 life/safety emergency or to comply with the implied warranty of habitability as required
7 by N.R.S. § 118A.290.

8 R. The Receiver shall, upon demand by Freddie Mac, pay all Rents, Issues and
9 Profits of the Property (less a reasonable reserve and amounts paid for expenses
10 authorized in this Order) to Freddie Mac. Freddie Mac's receipt of any payment less than
11 the full amount due shall not constitute a waiver or cure of (1) the defaults, (2)
12 acceleration of the principal balances secured, or (3) any other right granted Freddie Mac
13 under the Charleston Senior Deed of Trust and/or the Torrey Pines Senior Deed of Trust.

14 S. The Receiver shall, in all respects, comply with the provisions of the
15 Nevada Residential Landlord and Tenant Act. N.R.S. § 118A.010, et seq.

16 T. The Receiver shall have authority to bring an action, pursuant to N.R.S.
17 § 40.215 et seq., in the name of the Receiver on behalf and for the benefit of Lantana TIC
18 for unpaid rent, for forcible/unlawful detainer and to fully and thoroughly prosecute such
19 claims or compromise the same for the benefit of the receivership estate.

20 U. No later than the twenty-first (21st) day of each month (or the first business
21 day thereafter if such day falls on a Saturday, Sunday or holiday), the Receiver shall
22 furnish the parties and file with the court monthly accounting of the Rents, Issues and
23 Profits collected or received from the Property and all disbursements made therefrom
24 during the immediately preceding month.

25 V. No later the forty-five (45) days after the date of this Order, the Receiver
26 shall furnish the parties with a projection of income and expenses necessary for the

1 operation of the Property and a takeover report, including, but not limited to, information
2 regarding the physical condition of the Property, occupancy, operations and the
3 preliminary plan to address any property issues.

4 W. Upon Freddie Mac's reasonable request, the Receiver shall make available
5 for examination, inspection and copying, the records, books of account, ledgers and all
6 other business records related to the Property, wherever located and in whatever mode
7 maintained.

8 X. Pursuant to Rule 66-4, D.Nev.L.R., within sixty (60) days of the date of this
9 Order, the Receiver shall file a verified report and account of the Receiver's
10 administration.

11 Y. The Receiver shall receive reasonable compensation for the performance of
12 the Receiver's duties. Unless authorized by the court, the Receiver shall not receive
13 compensation greater than the Receiver obtained when serving as property manager for
14 Lantana TIC. The Receiver's fee for receivership services shall be the greater of \$20 per
15 rented unit per month or 2.5% of gross revenue for a month; plus 6% of any costs of
16 construction as a construction management fee, subject to possible upward adjustment to
17 a maximum of 10%, if permitted by the Court. The Receiver shall be paid for additional
18 receivership services, as necessary, based upon compensation which may be paid on an
19 interim basis, subject to final approval by the Court.

20 Z. A hearing shall be held on ___January 18, 2011 ___4:00_ p.m.,
21 which date is not less than ten days after the filing of the verified report and account. The
22 Receiver shall provide copies and proof of mailing to all parties and known creditors of
23 the party subject to receivership. The report and account shall contain, at a minimum:

- 24 1. A summary of the operations;
- 25 2. An inventory of assets with assigned values;
- 26 3. A schedule of all the Receiver's receipts and disbursements;

1 4. A list of all known creditors with their addresses and amounts of
2 claims; and

3 5. Recommendations for a continuation or discontinuation of the
4 receivership and the reasons therefor.

5 AA. The court shall approve or disapprove the Receiver's report and account,
6 make a determination whether the receivership should continue, and fix a date and time
7 for further proceedings for the receipt and consideration of further reports. Ten days'
8 notice shall be required for any hearings on petitions for approval of payments; petitions
9 for confirmation of sales of real or personal property; applications for fees of the
10 Receiver, attorneys, or other professionals; applications for employment of professionals;
11 and application for discharge of the Receiver.

12 BB. Thereafter, the Court shall conduct a hearing on the status of the
13 receivership and any necessary modification to this Order or the discontinuation of the
14 effectiveness of this Order, upon ten days notice, but not less than every 120 days after
15 the first interim hearing.

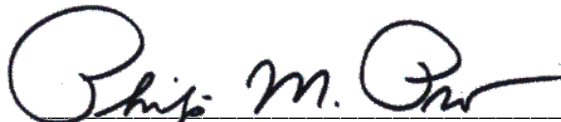
16 CC. The Court affirms that Freddie Mac has and holds a perfected and senior
17 security interest in and to the Property, including all personal property and rent
18 receivables, lease benefits, and income from the same. Except for expenses determined
19 necessary to continue operations, the Receiver is hereby authorized to apply cash receipts
20 to the indebtedness owed to Freddie Mac. In each interim verified report and account of
21 the Receiver's administration, the Receiver shall simultaneously move for approval of
22 payments to Freddie Mac.

23 DD. The Receiver shall be paid compensation in accordance with the stated
24 proposal for engagement attached to Freddie Mac's motion/application for appointment
25 of receiver. Payments for the Receiver, and any necessary professionals of the Receiver
26 (including accountants and attorneys) shall be paid upon approval in advance and upon

1 proof that the estate established by the Receiver will not suffer any substantial detriment
2 from the payment of such compensation. All attorneys, accountants and real estate
3 professionals shall first be approved by the Court before such persons shall incur any fees
4 or be entitled to any compensation. Each professional shall first establish their
5 qualifications and the basis for compensation including a description of services to be
6 provided and the benefit conferred to the receivership. Any application for employment
7 of a professional shall state under oath that the applicant has not entered into any
8 agreement, written or oral, express or implied, with any other person concerning the
9 amount of compensation paid or to be paid from the assets of the receivership estate, or
10 any sharing thereof. The Receiver is hereby conferred standing in this action to seek
11 approval of the Receiver's activities; seek instructions; seek clarification, modification, or
12 termination of this Order to limit, explain, magnify, or enlarge the Receiver's power and
13 authority as the circumstances may warrant; and seek a discharge of the Receiver's
14 obligations under this Order.

15 EE. The Receiver shall post bond or deposit payment into the registry of the
16 court within the next ten days in the sum of \$25,000.00.

17
18 DATED: November 9, 2010

19
20 

21 PHILIP M. PRO
22 United States District Judge
23
24
25
26